



MODRALL SPIERLING  
LAWYERS

ORIGINAL

RECEIVED

August 14, 2003

AUG 15 2003

Arthur D. Melendres  
505 848 1805  
Fax 505 848 9710  
amelendres@modrall.com

Marlene H. Dortch, Esq., Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Request for Review by Albuquerque Public School District  
CC Docket Nos. 96-45 and 97-21, DA 03-2206  
EX PARTE PRESENTATION

Dear Secretary Dortch

As a follow-up to our meetings last week, APS submits the following information in response to various questions that were raised. Two copies of this information are being filed this day with the Secretary's office. Specifically, this letter addresses five areas of questioning: (1) whether the Western States Contracting Alliance ("WSCA") Request for Proposals ("RFP") dealt with maintenance and support services in addition to computer hardware, (2) if so, whether IBM's bid contained proposals for maintenance and other related support services; (3) how pricing for services under the Master Price Agreements works, (4) the relationship, if any, between APS and Alpha Telecommunications, Inc., and (5) the manner in which APS calculated its reduced lunch population. Each area of questioning is addressed in turn.

**1. The WSCA RFP Required Offerors To Submit Proposals Detailing Their Ability To Provide Maintenance And Other Related Support Services**

RFP 90-00151 clearly called for offerors to provide the maintenance and support services in question. In fact, the RFP itself was titled "Manufacturer Supplied Computer Equipment with Peripherals, Software, **Equipment Maintenance and Support Services**." See RFP p. 1 (emphasis added) (attached as Exhibit "H" to APS' Request for Review). The RFP goes on to state that the "purpose of this Request for Proposals (RFP) is to establish price agreements on a competitive basis with qualified computer equipment manufacturers who shall directly supply computer equipment . . . **and maintenance and support services to qualified purchasers**." See RFP p. 4(A) (emphasis added).

When summarizing the scope of work called for in the RFP, WSCA stated that "[c]ontractors are **required to provide maintenance services** on equipment that is purchased." See RFP p. 4(B) (emphasis added). Furthermore, the scope of the RFP included "a wide range of manufacturer supplied computing equipment, including peripherals, general-purpose software, **maintenance and support services.**" See RFP

Modrall Spierling  
Roehl Harris & Sisk P.A.

Bank of America Centre  
500 Fourth Street NW  
Suite 1000  
Albuquerque,  
New Mexico 87102

PO Box 2168  
Albuquerque,  
New Mexico 87103-2168

Tel 505 848 1800  
www.modrall.com

p 4(C) (emphasis added) In fact, the stated mission of the WSCA "is to implement multi-state contracts to achieve cost-effective and efficient acquisition of quality products **and services**" See RFP p. 8 (emphasis added)

In outlining the specifications and other relevant information offerors were to use in preparing their proposals, the RFP stated that offerors "must describe their ability to provide computer equipment **including related products and support services** to the WSCA states and the various governmental entities therein" See RFP p 23(B)(1) (emphasis added)

## **2. IBM's Bid Contained Proposals Relating To Its Ability To Provide Maintenance And Other Support Services**

In addition to simply requiring offerors to include maintenance and other support services as part of their proposals, WSCA factored an offeror's ability to provide these services into the scoring of the proposals For instance, up to 40 points were awarded based on an offeror's ability to provide technical and marketing personnel in the applicable geographic area See RFP p 29 (B)(1)(b) Twenty points were available to offerors who could offer "value added technical services including installation, training or directly related optional services " See RFP p 30(B)(1)(e) Additionally, up to 25 points were awarded based upon "the number and type of technical support services than [an offeror] proposed " See RFP p. 30(B)(4).

As the Evaluation Committee summary makes clear, IBM scored well in all of these support service/maintenance areas. For instance, IBM's proposal received 37 out of 40 points in the area of technical/marketing personnel provided in the coverage area See Evaluation Committee Charts (attached as Exhibit "L" to APS' Request for Review) IBM also received one of the higher scores in the area of Value Added Services (installation, training, and directly related optional services) by receiving 16.6 out of a possible 20 points Id IBM's proposal received another high score in the area of technical services (19.2 of 25 points) Id Based on its high scores in these (and other) areas, IBM was selected as one of five companies to receive price agreements with WSCA

## **3. The Prices Available Under The 1999 IBM Master Price Agreement 94-00151 Are Subject To Periodic Changes**

As stated in the RFP, "[t]he procuring agencies shall pay the lower of the prices contained in the ESS [Equipment and Service Schedule] or an announced promotion price, educational discount price, general price reduction price or large order negotiated price" See RFP p 44(13) ESS prices are "the prices offered to WSCA members exclusive of Announced Promotional Prices, Educational Discount Prices, General Price Reductions, or Large Order Negotiated Prices." See RFP pp 36-37 Accordingly, the most a purchaser would pay under the Master Price Agreement is the ESS price, a special price offered to WSCA members However, purchasers may also be entitled to various discounted prices in the form of promotional discounts, educational discounts, large order discounts, etc Additionally, as explained in APS' Request for Review, the procurement also included additional, predetermined discount percentages to be applied after cumulative sales volume levels passed certain "trigger points," at which time additional price discounts would automatically kick in See APS Request for Review, Exhibit "P"

Although the Master Price Agreements with the five finalists were reached in 1999, the prices charged under the agreements are not stagnant. Rather, the ESS prices are subject to change. Generally, these prices have been updated annually. IBM's current prices for WSCA Agreement 94-00151 are available at [http://www-1.ibm.com/gold/portal/servlet/gold/wscs/Content?contentURL=/gold/portal/html/en\\_US16/74665.html&page=Content](http://www-1.ibm.com/gold/portal/servlet/gold/wscs/Content?contentURL=/gold/portal/html/en_US16/74665.html&page=Content) (webpage attached as Exhibit "A"), see also IBM's 2003-2004 ESS prices for support services (attached as Exhibit "B"). When APS (or any other purchaser) orders maintenance or support services from IBM, the relevant ESS prices for the services requested can be found at this site. IBM used the current WSCA prices to develop the Statement of Work which APS accepted and included in its 471 because it believed the WSCA prices to be the lowest available. Please recall that APS did not accept the entirety of the IBM proposal. For example, video conferencing was rejected, as it was not part of APS' Technology Master Plan.

**4. APS Was Solely Responsible For Developing And Drafting Its Forms 470 And 471**

During our meeting last week, APS was asked a series of questions related to Alpha Telecommunications, Inc. ("Alpha"). Specifically, APS was asked: (1) what was the relationship between APS and Alpha?; (2) did APS make any payments to Alpha?, and (3) why APS thought Alpha did not request payment? Although this line of questioning was not anticipated, APS responded accurately and truthfully. If you'll recall, APS' Technology Master Planner, Maureen Davidson, stated that Alpha visited APS and discussed ways in which it believed it could help APS with its request for E-rate funding. Ms. Davidson further explained that Alpha did so voluntarily and did not request (nor did APS provide) payment. As to why Alpha met with APS and provided its perspective on E-rate funding requests, Ms. Davidson stated that Alpha was perhaps attempting to garner favor with APS in hopes of securing future business.

APS has subsequently learned that Alpha is under investigation by the Committee on Energy and Commerce. Accordingly, APS would like to make it very clear that while APS met with Alpha and Alpha provided insight into the E-rate process, APS' Technology Department, using the APS Technology Master Plan as a guide, was responsible for preparing the 470 and 471. As explained in APS' Request for Review, the information contained in these forms was a direct byproduct of APS' Technology Master Plan and the result of many hours of planning from the Technology Department. In short, the 470 and 471 filings were the product of APS and not Alpha.

**5. Calculation Of Free And Reduced Lunch Population**

Lastly, there appeared to be some concern as to how APS calculated the number of students qualifying for the free or reduced lunch program. In New Mexico, funding is determined in part by the number of students a district has that qualify for the free or reduced lunch program. For instance, New Mexico has an Incentives Program (based on the Incentives for School Improvement Act), as well as an Intervention Program. Schools evidencing the greatest increase in test scores from one year to the next may receive monetary awards. Conversely, public schools whose performance is "low" may be subjected to corrective actions and interventions. Under both programs, test scores are adjusted by a number of socioeconomic factors, including the percent of students eligible for free or reduced lunch under the National

School Lunch Program In making these calculations, APS uses what's known as the 40-day count Essentially, an enrollment "snapshot" is taken on the 40<sup>th</sup> day of the school year to determine the number of children enrolled in the district. The 40-day count determines the operational budget for the coming year and permits an analysis of the number of children at each school who are eligible for the free or reduced lunch program

In applying for E-rate funding, APS used the numbers available to it from the 40-day count in determining the number of students at each school who are eligible for the National School Lunch Program The remainder of the calculations (*i.e.*, the discount percentages for each school from the Discount Matrix; the weighted product for calculating the shared discount, the sum total of the weighted products for all schools, the weighted average discount percentage, etc ) were automatically performed for APS when it filed online

I trust you will find these answers satisfactory Please let me know if we can be of any more assistance

Sincerely,



Arthur D. Melendres  
Counsel  
Albuquerque Public School District

ADM/acw/w0317746 DOC  
Enclosure - as stated

cc Commissioner Kathleen Abernathy  
Commissioner Michael Copps  
William Maher, Chief, Wireline Competition Bureau  
Christopher Libertelli  
Matthew Brill  
Jessica Rosenworcel  
Scott Bergmann  
Carol Matthey, Deputy Chief, Wireline Competition Bureau  
Eric N. Einhorn, Chief, Telecommunications Access Policy Division  
Mark Seifert, Deputy Chief, Telecommunications Access Policy Division  
Narda Jones  
Jonathan Secrest  
Kathy Tofigh  
Sheryl Todd, Telecommunications Access Policy Division  
Qualex International  
Vincent J. Curtis, Jr  
Frank R. Jazon  
Raymond J. Quianzon  
Members, APS Board of Education  
APS Superintendent, Elizabeth Everitt

United States



Shop now

**Western States  
Contracting Alliance**

Sign in

Servers, desktops,  
notebooks and more!

Data Communications

Ordering Assistance

Events Calendar

PC source codes

**IBM Easy Access  
Sales & support**  
1-877-426-4264[Home](#) | [Products & services](#) | [Support & downloads](#) | [My account](#)

## State of New Mexico

Servers, desktops, notebooks and more

WSCA Agreement Number 94-00151

[Request a price quote](#)[Request a PC catalog](#)[Need assistance with your order?](#)

### Notebooks, desktops and **server xSeries**

Visit your online PC store for notebooks, desktops and **server xSeries** products. Customize and order directly from IBM

### IBM **server pSeries**

Shop online for select IBM **server pSeries** products  
View an ESS complete list of System Units, Options and Maintenance and Displays

### IBM **server iSeries**

Learn about select IBM **server iSeries** products  
View an ESS complete list of System Units, Options and Maintenance and Upgrades, Displays and Modems

### Storage

View price schedules for: Disk, Tape and Optical products.

### Network stations / networking

View price schedules for: Networking Stations and Networking Products

### Printers

Shop online for select products and view an ESS product price schedule.

### UPS

View ESS product price schedules on Uninterruptible Power Supplies.

### Software

View ESS product price schedules on IBM software.

### Support services

IBM provides a wealth of support and product information.



### Related links

Visit the WSCA Administrative site for complete details.

[About IBM](#) | [Privacy](#) | [Legal](#) | [Contact](#)



IBM HOURLY SUPPORT SERVICE RATES  
ALL PRICES ARE SUBJECT TO CHANGE AT ANY TIME

Prices contained herein are subject to change and do not include any State & Local taxes, if applicable for your area. Please consult your IBM representative for current prices or to verify tax implications or exemptions.

Additional Notes

- 1 IBM's normal working hours are 8am-5pm, M-F, excluding holidays
- 2 Hourly Maintenance Rate is per hour/per person
- 3 Hourly Maintenance 2 Hour minimum
- 4 Hourly Maintenance Parts/Travel separate Travel \$ 60/mile for SVC Center to SVC location
- 5 Hourly Maintenance 115th Hourly rate incurred during IBM's normal working hours
- 6 Hourly Maintenance Parts costs are separate and will be detailed on the invoice for the specific hourly maintenance services call and thus made part of this agreement
- 7 ProgreTech Consulting Outside normal working hours, the rates identified above will be increased by 15%
- 8 ProgreTech Consulting Transportation/Per Diem costs (lodging, meals, incidental expenses) are separate and will be detailed in the specific contract and thus made part of this agreement
- 9 ProgreTech Consulting Travel time (see 8a) is billable at the same hourly rates as set forth in the Services price list. Mileage shall be reimbursed at a rate not exceed \$ 50 per mile
- 10 Billable Travel Time is travel time in excess of one hour spent traveling to/from service location

**HOURLY MAINTENANCE SERVICE RATES:**

**\* PRICES ARE SUBJECT TO CHANGE AND ARE AVAILABLE UPON REQUEST AS A QUOTE OR STATEMENT OF WORK**

	Hourly	1/10th Hourly	Outside Regular Hours
Machine Class 1	\$172.00	\$18.00	\$197.00
Machine Class 2	\$236.00	\$24.00	\$271.00
Machine Class 3	\$325.00	\$33.00	\$376.00
Machine Class 4	\$172.00	\$18.00	

### ACCOUNT ADVOCATE HOURLY RATES \*

\* PRICES ARE SUBJECT TO CHANGE AND ARE AVAILABLE UPON REQUEST AS A QUOTE OR STATEMENT OF WORK

## SUPPORT LINE OPTIONS

TOTAL SYSTEMS SOFTWARE SUPPORT	\$396.00	\$396.00
Flat Fee mach #1 in each oper System		
Additional machine after 1st (each)	\$50.00	\$28.00
Multivendor with no IBM OS (preliminary)	\$2,750.00	
Uplift on Total Price		

EXHIBIT

Additional machine after 1st (each)	\$50 00	\$28 00
Multivendor with no IBM OS	\$2,750 00	

CROSS-SYSTEM PRODUCT SOFTWARE SUPPORT

AD	\$12,777 00
COMM	\$15,840 00
DM	\$11,847 00
I/E	\$10,919 00
TS	\$12,777 00
NSM	\$11,847 00
WG	\$10,771 00
IN10	\$15,331 00
IND11	\$8,646 00
IND12	\$10,875 00
IND13	\$10,875 00
IND15	\$58,495 00
IND16	\$58,495 00
IND17	\$58,495 00

Addnl Acct Advocate NOTES

For SP machines

Fiat Fee for 1st Node	\$396 00
Additional Nodes After 1st (each)	\$28 00

For PS platform

Based on same server methodology in SL

Fiat Fee for 1st Server	\$396 00
Additional Servers after 1st (each)	\$50 00

Multivendor with IBM Operating System Calculated the same as IBM Platform  
No additional charge for the Independent Products group

---

**PROGRAMMING SERVICES HOURLY RATES\***

---

\* PRICES ARE SUBJECT TO CHANGE AND ARE AVAILABLE UPON REQUEST AS A QUOTE OR STATEMENT OF WORK

Codes, and tests software based upon software specifications and designs.

Uses sound software engineering principles to ensure that developed code

is modifiable efficient, reliable, understandable, and fault tolerant. Provides

software process management and control throughout the coding portion

of the software development process

Experience Level	Hourly Rates	Position Title
A	\$269 00	Senior Consultant I/T Specialist
B	\$235 00	Certified I/T Specialist
C	\$204 00	Senior I/T Specialist
D	\$176 00	Advisory I/T Specialist
G	\$149 00	Senior Programmer/Analyst
I	\$121 00	Junior Programmer/Analyst
J, K	\$106 00	Journeyman Programmer/Analyst
C, D, E, F	\$204 00	Programmer/Analyst
G, H, I	\$149 00	Systems Programmer/Analyst

---

**TECHNICAL AND CONSULTING SERVICES HOURLY RATES\***

---

\* PRICES ARE SUBJECT TO CHANGE AND ARE AVAILABLE UPON REQUEST AS A QUOTE OR STATEMENT OF WORK

Provide managerial and technical leadership for development, implementation and operations of complex information technology systems implementation

EXPERIENCE LEVEL	HOURLY RATES	Experience Level Description
A Prime	\$400 00	Up to/exceed 25yrs exper. ing. complex I/T systems w/expertise in specific discipline
A	\$293 00	Up to/exceed 25yrs exper. ing. complex I/T systems
B	\$256 00	Up to/exceed 20yrs exper. ing. complex I/T systems
C	\$222 00	Up to/exceed 15yrs exper. ing. complex I/T systems
D	\$192 00	Up to/exceed 12yrs exper. ing. integrated systems
E	\$180 00	Deep understanding of arch. techniques, mgmt. process across broad systems, applic., and requirement's spectrum
F	\$173 00	Generally regarded as expert in particular discipline/technology
G	\$162 00	Broad knowledge of labor category field w/ability to independently work complex assignments
H	\$153 00	Significant knowledge of labor category field w/ability to independently work typical assignments
I	\$132 00	General knowledge of labor category field w/ability to work w/minimal supervision
J	\$116 00	Basic knowledge of labor category field w/ability to work w/supervision
K	\$83 00	Some knowledge of labor category field w/ability to work w/supervision.

Services Hourly.xls